Tualatin Electric, Inc. *and* International Brotherhood of Electrical Workers, Local Union No. 48. Case 36–CA–7099

December 18, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

On April 13, 1995, Administrative Law Judge James S. Jenson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Union filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings, and conclusions as modified below and to adopt the recommended Order as modified.[2]

1. The Respondent contends that the judge erred in concluding that it violated Section 8(a)(3) of the Act by refusing to hire applicants Steven Dietrich, Paul Kingston, Gary Mangel, and Cal Caines, who, the Respondent asserts, were sent by the Union to obtain employment pursuant to the Union's ''salting'' program.[3] The Respondent contends that because the applicants at issue were ''salts,'' they are not statutory employees entitled to any protection under the Act. This issue has been recently decided by the Supreme Court, which agreed with the Board that job applicants who are also paid union organizers are nevertheless employees within the meaning of Section 2(3) of the Act, and are, therefore, entitled to its protection. See *NLRB v. Town & Country Electric*, 116 S.Ct. 450 (1995). We therefore adopt the judge's conclusion that the Respondent violated Section 8(a)(3) by refusing to hire Dietrich, Kingston, Mangel, and Caines.

2. We agree with the judge that the Respondent's ''moonlighting'' policy, which prohibited employees from receiving compensation from any source other than the Respondent, violates Section 8(a)(1). Despite the Respondent's contention that the moonlighting policy was ''intended to provide both needed time off to employees [and] to avoid [employee] conflict of interest in serving different masters,'' there is abundant evidence in the record indicating that the moonlighting policy was adopted primarily as a result of the Respondent's antiunion animus. In this regard, the judge credited the testimony of the Respondent's former senior designer/project manager, Hal Pietrobono, who testified that in meetings with the Respondent's owner, Mike Overfield, Overfield admitted that the purpose of the moonlighting policy was to prevent or eliminate the employment of ''salts.'' Pietrobono also testified that Overfield instructed the Company's superintendent to ''eliminate wherever possible any personnel that were affiliated with the union.'' The record further reflects that the Respondent offered to create an exception to the moonlighting policy for a job applicant who planned to obtain outside compensation from his locksmith trade, without inquiring into whether that employee might be deprived of needed time off or whether the locksmith trade would present any conflicts for the employee. In addition, the Respondent implemented its moonlighting policy in the summer of 1993, well after the Union's salting initiative began,[4] thus providing at least some indication that it was adopted in response to the Union's salting program.[5] Finally, during his testimony, Overfield recounted his ongoing battles with the Union and repeatedly demonstrated his virulent antiunion sentiment, including his belief that the Union engaged in organized crime and that it was out to destroy his Company. Overfield's testimony provides significant context for all the other indicia of union animus. When, as here, an employer implements a rule with the purpose of restricting or preventing employees from engaging in protected activity, Section 8(a)(1) of the Act has been violated. See, e.g., *The Miller Group*, 310 NLRB 1235 (1993), enfd. mem. 30 F.3d 1487 (3d Cir. 1994).

AMENDED CONCLUSIONS OF LAW

Add the following as Conclusion of Law 7.

''7. By interrogating employees about the Union at a mandatory meeting held on July 22, 1993, Respondent violated Section 8(a)(1) of the Act.''

[1] The Respondent has requested that the Board stay its decision in this case pending a decision from the Supreme Court in *Town & Country Electric*, 309 NLRB 1250 (1992), enf. denied 34 F.3d 625 (8th Cir. 1994), cert. granted 115 S.Ct. 933 (1995). Because the Supreme Court's decision in that case has issued in the interim, see *NLRB v. Town & Country Electric, Inc* 116 S.Ct 450 (1995), the Respondent's request is denied as moot. The Union has requested that the Board strike the Respondent's exceptions and brief for failure to comply with the Board's Rules. We hereby deny the Union's motion as well.

[2] We shall modify the judge's conclusions of law, recommended Order and notice to make specific reference to his finding that the Respondent violated Sec. 8(a)(1) by interrogating employees regarding the Union at a mandatory employees' meeting held on July 22, 1993. We shall also modify par. 1(a) of the judge's recommended Order to correct an inadvertent spelling error contained therein.

[3] As it operated in this case, the Union's ''salting'' program sought to have unemployed union members hired by a nonunion employer and, in exchange for their efforts to organize the nonunion employer's employees, the Union would provide those members with a wage subsidy that would bring their nonunion wages up to union scale.

[4] The Respondent was first ''salted'' by the Union in the summer of 1992. See *Tualatin Electric, Inc.*, 312 NLRB 129 (1993).

[5] Overfield stated during his testimony that in response to the Union's salting program, he instructed his superintendent in the summer of 1993 to inquire about job applicants' union affiliation.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Tualatin Electric, Inc., Wilsonville, Oregon, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Questioning job applicants or current employees regarding their union sympathies, activities, membership, or preferences for union or nonunion work.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT question job applicants or current employees regarding their union sympathies, activities, membership, or preferences for union or nonunion work.

WE WILL NOT refuse to hire applicants for employment because they are suspected of being ''salts'' or union members.

WE WILL NOT enforce the ''moonlighting'' policy, or implement or enforce any other policy designed to identify union members in order to discriminate against them or to discourage them from engaging in union or other protected concerted activity.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees or applicants for employment in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer immediate employment to the employees listed below in positions to which they applied and for which they are qualified or, if nonexistent, to substantially equivalent positions, and make them whole for losses sustained by reason of discrimination against them, with interest:

Steven Dietrich
Paul Kingston
Gary Mangel
Cal Caines

TUALATIN ELECTRIC, INC.

Daniel R. Sanders, Esq. and *Martin Eskenazi*, Esq., for the General Counsel.
Thomas M. Triplette, of Portland, Oregon, for Respondent.
Norman D. Malbin, of Portland, Oregon, for the Union.

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge. The matter was heard in Portland, Oregon, on May 17, 1994.[1] The principal issue is whether ''salts''—union members who obtained employment with an unorganized employer at the behest of his or her union so as to advance the union's interest there, i.e., organize the employer's unorganized employees—are employees entitled to the Act's protection, and whether four ''salts'' that applied for employment with Respondent were unlawfully denied employment because they were salts. In a previous case involving the parties herein, the Board held that ''salts'' are employees entitled to the Act.[2] Other issues are whether two of Respondent's supervisors unlawfully interrogated employees, told employees it was only hiring apprentices because of the Union's organizing efforts, and whether Respondent's ''moonlighting'' agreement was used as a device to eliminate ''salts.'' The Respondent denies the commission of any unfair labor practices and that ''salts'' are employees within the meaning of the Act.

All parties were given full opportunity to appear, to introduce evidence, examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs were filed by each of the parties and have been carefully considered.

On the entire record of the case, including the briefs, as well as my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

It was alleged, admitted and is found that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[3]

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[1] The charge was filed July 16, 1993, and amended on December 22, 1993. The complaint issued on December 22, 1993, and was amended at the hearing.

[2] *Tualatin Electric, Inc*., 312 NLRB 129 (1993), presently before the Ninth Circuit Court of Appeals on Respondent's petition and the Board's cross-petition for enforcement. The Board, made similar findings in *Sunland Construction Co*., 309 NLRB 1224 (1992), and *Town & Country Electric, Inc*., 309 NLRB 1250 (1992.) The latter case is now pending before the United States Supreme Court on the Board's petition for a writ of certiorari to the Eight Circuit Court of Appeal's denial of enforcement of its order.

[3] *Tualatin Electric, Inc*., supra.

II. THE LABOR ORGANIZATION INVOLVED

In the earlier case the Board found that the Union is a labor organization within the meaning of Section 2(5) of the Act. It is so found here.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Setting*

Respondent is a nonunion electrical contractor with its principal office located in Wilsonville, Oregon. Mike Overfield is the owner and president, and at the time material William Braat was the superintendent. The record establishes that each was a supervisor within the meaning of Section 2(11) of the Act. From January 25 to December 2, 1993,[4] when he was terminated, Hal Pietrobono worked for Respondent as senior designer/project manager. Edward L. Barnes is the Union's business manager/financial secretary. Mel Conner is the Union's business agent with the primary responsibility for organizing, and the individual that conducted the Union's ''salt program.'' Steve Dietrich, Paul Kingston, Gary Mangel, and Cal Caines are the applicants whom the complaint alleges were refused employment because of their union membership and activities. All four had completed the Union's ''salt program'' put on by Conner. The record shows that the local union has a salting resolution that permits union members, despite a prohibition in the constitution and bylaws, to work for nonunion employers with permission from the business manager. Although the Union can withdraw that permission while a ''salt'' is employed by a nonunion employer, Conner testified that he had never done so. He also testified that the purpose of salting was not only to gain information about the nonunion employer and its employees, but to provide employment for the union's unemployed members and to provide information about unions to nonunion workers. It appears from the testimony that a substantial part of the salt course consisted of ''Do's'' and ''Do Nots.'' Among the things Conners told them to ''do'' was to work as hard for a nonunion contractor as they would for a union contractor, meaning give 8 hours of work for 8 hours pay, tell the nonunion employees, before work, after work, or on breaks, about the advantages of being union and union fringe benefits, gather information on those interested in the Union, keep a log regarding the number of people on the job such as the ratio of apprentices to journeymen, how efficient they are, hours and wage rates, any license, OSHA or national electrical code violations, and try to make a favorable impression. The ''Do Nots'' included sabotage, disloyalty to the employer, promising anything to employees, lying, stealing, or cheating, obtaining information unlawfully, usurp corporate opportunity such as doing a job on the side or after hours for a customer, and not make any assumptions that nonunion employees or former union employees are less competent than union members.

The record leaves no doubt that Respondent is deeply hostile toward the Union. Both Overfield and his counsel acknowledged he had animosity toward the Union, Overfield referring to Local 48 as organized crime trying to put him out of business. Pietrobono, who attended weekly meetings with Overfield and Braat, testified without contradiction and is therefore credited, that Overfield told Braat ''to eliminate wherever possible any personnel that were affiliated with the Union,'' not to hire salts, and that the purpose of the ''moonlighting'' agreement that Respondent required new hires to sign was implemented for the purpose of eliminating salts. Pietrobono also testified that the purpose of the questionnaire used by Respondent to determine job capabilities of employees was to identify union and nonunion employees so that the latter could be weeded out. Overfield admitted that at the time he acquired the questionnaire, that he knew ''it meant an obstacle for the Union'' and could be used to identify union and nonunion employees. The record also shows that at a July 22 meeting with his employees, Overfield told them that ''as long as he owned the Company, it would never be union.'' Union animus having been firmly established, the unfair labor practice allegations follow.

B. *Complaint Allegations*

1. Terry Payne

Paragraph 5(a) alleges that about May 17, Braat interrogated a job applicant about his union membership, activities, and sympathies. Journeyman electrician Terry Payne, whose testimony is not contradicted and is therefore credited, testified that following the placement of his name on a list for work with nonunion contractors maintained by the Independent Electrical Contractors Organization, he received a call from Braat regarding out-of-town work that Payne declined. Later, in mid-May, he filed an application for employment with Respondent and ultimately met with Braat on May 17. He testified that he was required to sign a ''moonlighting'' agreement that he did under protest and that Braat asked if he had worked for any union contractors in the recent past, and whether ''he had ever been any part of the Union.'' Payne Responded that he had been a union member from 1976 to 1983 but was no longer a member, and that Braat said, ''[T]hat they had problems with the union in the past and that they really didn't want to be involved with anybody affiliated with the union.'' He was hired and worked from May 18 through June 24. In the context of the antiunion animus throughout this case, questioning an employee regarding his union affiliation before hiring him constitutes unlawful interrogation in violation of Section 8(a)(1) of the Act as alleged.

2. Cal Caines

Paragraph 5(b) alleges that about May 27, in a telephone conversation, Braat interrogated an applicant regarding his union membership and that of other employees and applicants. Paragraph 7 alleges Respondent refused to hire Caines because of his union membership. Caines, a journeyman electrician with 24 years of experience, filed an application for employment on May 24. A few days later he talked to Braat over the telephone, stating that he was a journeyman licensed in Washington and had a supervisor's card in Oregon. He testified that Braat asked who his previous employer was and that when he responded it was Friburg Electric, Braat asked, ''[I]f I worked pretty much union,'' and he replied that he was a union member. Braat asked if he realized ''we're a non-union shop'' to which Caines responded in the affirmative but that he needed a job. Braat stated he would review his application and get back to him. On July

[4] All dates are in 1993 unless stated otherwise.

6 Caines called Brat again and was told that no jobs were available. General Counsel's Exhibit 5, a payroll summary from May through October, discloses that Respondent's employee complement increased from 27 for the payroll period ending July 3, to 40 for the payroll period ending July 10, and that the regular hours of work for the same period increased from 1012 to 1889, clearly showing that Respondent was in an employing mode during the time Caines sought work with Respondent. Thus, I conclude that Braat's assertion that no jobs were available was a pretext and that the real reason for declining to hire Caines was his union background that Braat extracted from him on the telephone. Accordingly, I find that Respondent violated the Act as alleged in paragraph 5(b) and also declined to offer him employment because of his union background as alleged in paragraph 7, thereby violating Section 8(a)(3) and (1) of the Act.

3. Paul Kingston

Paragraph 6(b) alleges that about June 11, in a telephone conversation, Braat interrogated an employee regarding his union membership. Paragraph 7 alleges Respondent refused to hire Kingston because of his union membership. Kingston, with 25 years experience as a journeyman electrician, called Braat on June 9 and stated he had worked with Braat in the mid-seventies at Tice Electric and was looking for work. Braat told him to file an application, which he did the next day. The following day in Braat's absence, he talked to Overfield who expressed concern whether Kingston might leave ''if the union calls.'' Kingston stated it didn't look like he could get work through the union for 4 to 6 months and that he could be useful to someone. Overfield said there was a meeting on the following Monday and he'd get back to Kingston. The following week, Kingston talked to Braat who said he and Overfield had discussed his experience ''being union'' and that Overfield was concerned over the fact he might leave if the union called. Braat said, ''they had an influx of workers coming in, besides Mike didn't want any affiliation with the union right now . . . .'' Kingston asked if that meant that Overfield wouldn't hire him because he was union, and Braat said yes, that Overfield ''was nervous about me converting his employees over to the union.'' Kingston was not hired. In the context of this case, which shows an abundance of union animus, I conclude that asking an applicant if he might leave ''if the union calls,'' violates Section 8(a)(1) as alleged. The facts also establish, as alleged in paragraph 7 of the complaint, that Kingston was denied employment because of his union affiliation in violation of Section 8(a)(3) and (1).

4. Robert Fitzpatrick

Paragraph 5(c) alleges that about June 15, Braat interrogated an employee about his union membership. Fitzpatrick, a journeyman electrician since 1978, testified that he filed an application for employment on June 15, and that the following day Braat called him at home and asked if the last shop he had worked at was union, to which he replied in the negative. Fitzpatrick was hired. Questioning him in this manner was an obvious ploy to determine his union or nonunion membership and violated Section 8(a)(1) as alleged.

5. Steven Dietrich

Paragraph 6(a) alleges that about June 1, at the Beaverton Middle School jobsite, Overfield interrogated a job applicant regarding his union membership, activities, and sympathies. Paragraph 7 alleges Respondent refused to hire Dietrich because of his union membership. Dietrich, a journeyman electrician for 13 years, testified he filed an application on May 24 and several days later received a call from Braat who queried him regarding prior contractors for whom he had worked, during the course of which he asked if Dietrich was aware Respondent was nonunion, to which Dietrich responded that he didn't care, that he had worked nonunion in Arizona and union in Oregon. Braat indicated he wanted to think it over. They talked again a couple of days later and discussed wages with Dietrich asking $18 an hour and Braat stating they paid $17.71. After further discussion Braat asked if he ''were able to get $18 and hour,'' would Dietrich ''jump the ship in the middle of a job,'' to which Dietrich responded no, that he expected they would treat each other fairly. They agreed to meet in person on June first, but Braat called back and asked Dietrich to meet Overfield at the agreed upon time at the Beaverton Middle School. When they met at the school jobsite, according to Dietrich, Overfield asked for whom he had last worked, made some unspecified remarks regarding the union and asked what Dietrich liked about the union, Dietrich responding that he liked the various fringe benefits and not having to go through a ''90-day waiting period program'' when he went from contractor to contractor. Overfield mentioned he would have to sign the ''moonlighting agreement'' providing he wouldn't accept any funds from outside the Company. Dietrich stated he didn't have any problem with it but that he had just completed a locksmithing course that he intended to pursue during off hours. Overfield stated he would make an exception in the moonlighting agreement for locksmithing. As they walked back to Dietrich's truck to retrieve a resume, Overfield asked if Barnes, the union business manager, had sent him and then if Business Agent Conner knew he was there and Dietrich said probably. After receiving the resume, Overfield said he would check one of the Arizona references he was acquainted with. Several days later, after failing to reach Overfield by phone, Dietrich received a letter returning his resume and stating that Overfield had ''called references and reports were not favorable.'' Overfield testified he learned Dietrich had a bad temper and wasn't good on the service truck. Dietrich asked Conner to check with the owner of Adams Electric whom he suspected of giving him a bad report. Conner did so and learned he had reported to Overfield that Dietrich was fine for site work but that they wouldn't hire him for service truck work. Dietrich testified he and the owner of Adams Electric didn't see eye-to-eye over service truck work, which he didn't like. There can be no doubt that Respondent knew Dietrich was favorable toward the union. Braat had learned that while Dietrich had worked nonunion jobs in Arizona, his Oregon experience was with unionized employers. Overfield questioned him concerning what he liked about the unions and then informed him that he would have to sign the ''moonlighting'' agreement. Although Dietrich didn't seem reluctant to discuss the union with Overfield, I'm convinced that having learned Conner ''probably'' knew that Dietrich had applied for a job, Overfield realized he was probably a salt and had to find a

reason for not hiring him that presumably had nothing to do with the union. His efforts to identify anyone connected with the union, and his extreme animus against the union, convince me that he had made up his mind not to hire Dietrich after questioning him regarding what he liked about the union and hearing his responses. I believe he realized that if he refused to hire him at that time he was surely inviting a charge. If he could delay informing Dietrich of his decision he might find a legitimate, although pretextual, excuse for not hiring him. In light of all of the evidence, including particularly Overfield's union animus and interrogation, obviously directed at determining Dietrich's feelings about the Union, I conclude and find that the interrogation violated Section 8(a)(1) and the reason for not hiring Dietrich was a pretext to mask the real reason, which was his union membership, thereby violating Section 8(a)(3) as alleged.

6. Gary Mangel

Paragraph 7 alleges Respondent refused to hire Mangel because of the Union. Mangel had been a journeyman electrician for 24 years, was a union member and licensed in both Oregon and Washington when he applied for a job with the Respondent on July 12 and was interviewed by Braat. Both men recognized each other as having worked for a unionized contractor a few years before. Respondents' deep hostility toward the union, and Overfield's instruction that Braat ''eliminate wherever possible any personnel that were affiliated with the union,'' convinces me that on learning Mangel had worked for a unionized employer, he did just that. Mangel was not hired. Respondent violated Section 8(a)(3) for refusing to hire him because of his prior known union affiliation.

Paragraph 6(c) alleges that about July 22, Overfield interrogated employees regarding the Union. A compilation of the testimony of Overfield, Schreifels, Fitzpatrick, and apprentice Duane Whitesides, which is mutually corroborative in material respects, discloses that Overfield spoke at a mandatory meeting on July 22 at which time he castigated the Union for its salt program, for allegedly maintaining a slush fund, which it used to supplement unionized employer bids in order to beat out nonunion employer's bids on jobs, and for being organized crime. He also compared Respondent's benefits with Union benefits. He asked if anyone present was a salt, and when Schreifels admitted he was, Overfield asked if the Union was supplementing his pay. He also commented that Schreifels was a valuable employee. He stated further that as long as he owned the Company, it would never be union. The General Counsel has proven paragraph 6(c) of the complaint.

7. Moonlighting policy

Paragraph 8 alleges that during May through July, Respondent had a ''moonlighting'' policy that prohibited employees from receiving compensation from a third party and that its purpose was to discourage employees from engaging in union or protected concerted activity. A copy of the document is attached here to as ''Appendix A.'' Pietrobono testified that Overfield told Braat and him that the purpose of the moonlighting agreement was to eliminate salts. As salts are union members considered by the Board to be employees entitled to the Acts protection, a policy of eliminating them by reason of their union membership violates Section 8(a)(1) of the Act as alleged in paragraph 8.

Conclusion

Although the case was tried and briefed by all of the parties on the ''salting'' theory, in my view Respondent's union animus is so pervasive and the nature of the unfair labor practices so egregious, striking at the very heart of the Act, that whether the discriminatees were or were not salts is of no moment. Respondent at no time knew the discriminatees were salts, rather its conduct was directed against any applicant that had either worked for an unionized employer or that it suspected of having ever had a union connection. Its entire course of conduct, in my view, constitute classic 8(a)(3) and (1) violations. Nevertheless, I have considered the Respondent's argument regarding the ''salting'' issue, but as Respondent's counsel recognizes, I have no power or authority to overrule the Board's decisions in this respect. Accordingly, on the basis of Board law expressed in *Tualatin Electric, Inc*., supra, *Sunland Construction Co*., supra, and *Town & Country Electric, Inc*., supra, salts are employees entitled to the Act's protection and that the Respondent has violated the Act as alleged in the complaint, except for paragraph 5(d) for which no evidence was offered.

CONCLUSIONS OF LAW

1. The Respondent, *Tualatin Electric, Inc*., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local Union No. 48, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating applicants for employment about their union sympathies, membership, or activities Respondent violated Section 8(a)(1) of the Act.

4. By maintaining a ''moonlighting'' policy that prohibits employees or applicants for employment from receiving compensation from a labor organization Respondent violated Section 8(a)(1) of the Act.

5. By refusing to hire the following applicants for employment because of their union sympathies, membership, or activities Respondent violated Section 8(a)(3) of the Act:

Steven Dietrich	Paul Kingston
Gary Mangel	Cal Caines

6. Respondent did not engage in the unfair labor practice alleged in paragraph 5(d) of the complaint.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it shall be recommended that it cease and desist therefrom, and take certain affirmative action deemed necessary to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire the employees named below:

Steven Dietrich	Paul Kingston
Gary Mangel	Cal Caines

It shall be recommended that they be offered immediate employment in positions for which they have applied and are qualified, to the extent vacancies exist, and they shall be made whole for any earnings lost by reason of the discrimination against them.

Backpay due under the terms of this Order shall be computed on a quarterly basis as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and shall be reduced by net interim earnings, with interest computed as specified in *New Horizon for the Retarded*, 283 NLRB 1173 (1987). All reinstatement and backpay recommendations are subject to the procedures discussed in *Dean General Contractors*, 285 NLRB 573 (1987), and *Haberman Construction Co.*, 236 NLRB 79 (1978).

The General Counsel seeks a broad order in view of the earlier unfair labor practice findings by Administrative Law Judge Clifford H. Anderson, whose decision issued on April 6, 1993, and was affirmed by the Board on September 15, 1993. The unlawful interrogations here commenced in mid-May 1993, on the heels of Judge Anderson's finding and recommendation that Respondent cease and desist from such conduct. Respondent's proclivity to violate the Act is further evidenced by its utilization of the ''moonlighting'' agreement to identify and weed out unionized employees and applicants for employment, also on the heels of the earlier decision. Although not alleged as a violation in the complaint, Respondent's propensity to discriminate against union applicants is further shown by the utilization of a questionnaire to determine job capabilities of employees, which Overfield admitted could be used to identify union and nonunion members. The Board has long held, with court approval, that a broad remedial order is appropriate whenever a proclivity to violate the Act is established either by the facts within a particular case, or by prior Board decisions against the Respondent at bar based on similar unlawful conduct in the past. In my view a broad cease and desist order is appropriate and is recommended.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Tualatin Electric, Inc., Wilsonville, Oregon, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Questioning job applicants regarding their union sympathies, activities, membership or preferences for union or nonunion work.

(b) Refusing to hire applicants for employment because they are suspected of being ''salts'' or union members.

(c) Enforcing the ''moonlighting'' policy, or implementing or enforcing any other policy designed to identify union members in order to discriminate against them or to discourage them from engaging in union or other protected concerted activities.

(d) In any other manner interfering with, restraining, or coercing employees or applicants for employment in the exercise of their right to join or assist labor organizations or discriminating against them because they engaged in union or concerted activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer immediate employment to the employees listed below in positions for which they applied and qualify or, if nonexistent, to substantially equivalent positions, and make them whole for losses sustained by reason of the discrimination against them, with interest, as set forth in the remedy section of this decision:

Steven Dietrich	Paul Kingston
Gary Mangel	Cal Caines

(b) Preserve and, on request, make available to the Board and its agents for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its main office and each of its jobsites where employees are currently employed, copies of the attached notice marked ''Appendix B.''[6] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges a violation of the Act not found herein, specifically paragraph 5(d).

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX A

MOONLIGHTING

The company desires that its employees, unless on layoff devote their time and energy to the performance of work for Tualatin Electric. Working two jobs does not allow an employee adequate or sufficient rest and may, in some circumstances, create conflict of interest. Accordingly, all employees of the company are forbidden to be on the payroll of and/or receive wages or other forms of compensation from a third party, absent the prior written consent of the employer.

I have read and understand this statement completely.